

**72/02**

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**FILED IN**  
**COURT OF CRIMINAL APPEALS****OCT 11 1995**

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Troy C. Bennett, Jr., Clerk

**ORIGINAL**

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CAUSE NO. 6,986

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
	§	
VS.	§	MORRIS COUNTY, TEXAS
	§	
	§	
BILLY JOE WARDLOW	§	276TH JUDICIAL DISTRICT

PRETRIAL MOTIONS

STATEMENT OF FACTS

HEARING ON PRETRIAL MOTIONS

May 18, 1994

VOLUME 3 of 43 volumes

Before Honorable Thomas B. Thorpe

Judge by Judicial Assignment

CAUSE NO. 6986

THE STATE OF TEXAS	)	IN THE DISTRICT COURT OF
	)	
VS.	)	MORRIS COUNTY, TEXAS
	)	
BILLY JOE WARDLOW	)	276TH JUDICIAL DISTRICT

**ORIGINAL**

VOLUME A OF PRETRIAL MOTIONS  
STATEMENT OF FACTS  
HEARING ON PRETRIAL MOTIONS  
MAY 18, 1994

FILED  
AT 1 O'CLOCK P M

JUL 14 1995

BOBBY LA PRADE - CLERK, DISTRICT COURT  
TITUS COUNTY, TX

DEPUTY 

BE IT REMEMBERED THAT on the 18th day of May, 1994,  
the above-styled and numbered cause came on for a hearing  
before the Honorable Thomas B. Thorpe, in the 276th  
Judicial District Court, County of Morris, City of  
Daingerfield, State of Texas, and the following  
proceedings were had:

CHRISTINA WALLACE  
Certified Shorthand Reporter  
(903) 639-2176

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\* \* \*

A P P E A R A N C E S

FOR THE STATE:

MR. RICHARD B. TOWNSEND  
District Attorney  
500 Broadnax Street  
Daingerfield, Texas 75638

FOR THE DEFENDANT:

MR. VERNARD G. SOLOMON  
Attorney at Law  
306 W. Houston Street  
Marshall, Texas 75670

\* \* \*

CHRISTINA WALLACE  
Certified Shorthand Reporter  
(903) 639-2176

1                                   P R O C E E D I N G S

2

3                   THE COURT: First of all, I introduced

4 myself to the attorneys and met you, briefly, and I also

5 want to introduce myself to the defendant. My name is

6 Judge Thorpe. I was the judge in a district court in

7 Dallas for 20 years and just recently retired and took

8 senior judge status which entitles me to sit in other

9 courts throughout the state as I might be needed, and I

10 was assigned by the presiding judge of this first

11 administrative judicial district to hear your case. And

12 so I will be your judge throughout this thing, provided

13 something doesn't happen on it.

14           The first order of business would be to have the

15 defendant formally arraigned. And so if the defendant

16 would please stand, I'll ask that the district attorney

17 present the indictment.

18           Your lawyer probably explained to you, but

19 arraignment is for the purpose of reading the indictment

20 so that you'll know exactly what you're charged with and

21 to establish your name, your true name, as being the name

22 contained in the indictment, and then I'll advise you as

23 to the possible consequences of the case and then we'll

24 proceed into the case.

25                                   (The indictment was read.)

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                                  Certified Shorthand Reporter  
                                  (903) 639-2176

1 THE COURT: All right. Mr. Wardlow, do you  
2 understand exactly what the indictment charges you with?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand that under  
5 the laws of the State of Texas that if a person  
6 intentionally or knowingly causes the death of an  
7 individual then that is the offense of murder, but the law  
8 goes further and says that if a person commits the offense  
9 of murder and intentionally kills the person while  
10 attempting to commit or committing the offense of robbery,  
11 that that makes it a capital murder. Do you understand  
12 that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. And do you  
15 understand that a person that's found to be guilty of  
16 murder could receive a sentence of confinement in the  
17 penitentiary for life or any term of years not more than  
18 99 or less than five? In addition, a fine of up to 10,000  
19 dollars could be imposed, but if a person is found guilty  
20 of a capital murder, then the punishment is either life  
21 imprisonment or death, depending upon how the jury answers  
22 certain questions, and those questions are propounded to  
23 the jury. If the jury answers the questions in a certain  
24 way, then it's automatic that the Court imposes the death  
25 penalty. If the answers to the questions are in a

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1 different way, then of course the Court would sentence you  
2 to life imprisonment. So do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Have you conferred  
5 with your client and is he ready to enter his plea to the  
6 indictment?

7 MR. SOLOMON: Your Honor, at this time when  
8 called upon to enter a plea, my client would stand mute.

9 THE COURT: All right. You have a right,  
10 of course, to stand mute and the effect of that is that  
11 the Court simply enters a plea of not guilty on your  
12 behalf and we'll proceed as if it were a plea of not  
13 guilty. So do you have any questions about the charge  
14 or --

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. Have you had an  
17 opportunity to go over the questions with him and explain  
18 to him the questions that the jury would have to answer?

19 MR. SOLOMON: The special issues?

20 THE COURT: The special issue questions?

21 MR. SOLOMON: No, I have not, Judge. I  
22 have not gotten to that extent with him.

23 THE COURT: All right.

24 MR. SOLOMON: I have explained to him how  
25 the process works in regard to the finding of a -- a



1 finding by a jury that would necessitate the death  
2 penalty, but I have not gone over the individual  
3 questions.

4 THE COURT: All right. One of the -- the  
5 issue number one is whether or not there is a probability  
6 that the defendant would commit certain acts of violence  
7 that would constitute a continuing threat to society. So  
8 that's -- if you are found to be guilty, then at the  
9 second phase of the trial that would be the dominant issue  
10 as to whether or not -- because of the facts of the case  
11 or because of other circumstances connected with the case  
12 that the jury would make that determination as to whether  
13 or not there is a probability that you would commit acts  
14 of violence in the future. And the Court would also  
15 instruct the jury to answer the question whether -- and  
16 taking into consideration all of the evidence, including  
17 the circumstances of the offense, the defendant's  
18 character and background and personal moral culpability  
19 such that there is sufficient mitigating circumstances or  
20 circumstances to warrant the sentence of life imprisonment  
21 rather than a death sentence being imposed.

22 So even if they answered yes to the question of  
23 probability, if they found that there was sufficient  
24 mitigating circumstances, then they could make the  
25 decision that you be sentenced to life imprisonment rather

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(903) 639-2176

1 than a death sentence. I know that your lawyer will go  
2 into these in more detail with you, but it's something to  
3 start thinking about in the event that you are found to be  
4 guilty. All right. You may be seated.

5 All right. What I really would like to do at this  
6 time is sort of go off the record and discuss some of  
7 these matters with you and the attorneys informally in  
8 order to see just when you think we might be able to get  
9 started with this case. So we'll go off the record and  
10 we'll put everything on the record that we need.

11 (Off the record.)

12 THE COURT: The record will reflect that  
13 it's been brought to the Court's attention that the  
14 defendant has certain problems with Mr. Solomon  
15 representing him and that he has contacted Judge Moye by  
16 letter or otherwise, and I don't know if he's contacted  
17 Judge Porter or not, but is there anything that you want  
18 to say to me concerning this matter?

19 THE DEFENDANT: No, sir.

20 THE COURT: And can you articulate to me  
21 any feelings or problems that you might have with Mr.  
22 Solomon representing you?

23 THE DEFENDANT: As far as his  
24 qualifications, he's qualified, but it's just as far as  
25 the way that I feel about him, it's just that I don't like

1 the man.

2 THE COURT: Well, we're --

3 THE DEFENDANT: And I feel that I may be  
4 misrepresented.

5 THE COURT: We're not exactly in a  
6 popularity contest as to who you like or don't like. It's  
7 a matter of -- it's up to the Court to see that you get  
8 fair and competent representation. Of course, it's always  
9 better for everyone if everybody likes each other and can  
10 cooperate throughout the proceedings, but that's not  
11 entirely necessary to have a case tried.

12 THE DEFENDANT: If I don't like the person,  
13 I won't --

14 THE COURT: The thing of the matter is that  
15 Mr. Solomon's duty is to protect every legal right that  
16 you have in the best way that he knows how to do that. He  
17 has the right to object to everything that's done and to  
18 make certain that if you are convicted that you be  
19 convicted under the laws. In other words, that everybody  
20 plays by the rules and that -- then he's also charged with  
21 the responsibility of putting your best foot forward to  
22 the jury and bringing forth witnesses and testimony that  
23 would influence the jury to rule in your favor. How much  
24 contact have you had with Mr. Solomon?

25 THE DEFENDANT: I believe he's been up here

1 four times, something like that.

2 THE COURT: And you've been in jail for how  
3 long?

4 THE DEFENDANT: A year.

5 THE COURT: A year? Okay. And I have to  
6 say that in many instances lawyers are busy just like  
7 everybody else, and they don't really get down to getting  
8 involved in the case until it gets up to the time for the  
9 case to come to trial and then they put everything else  
10 aside and pay total attention to the case. And in a  
11 capital case that's usually what happens is they have to  
12 put everything else in their practice aside for a period  
13 of time and give their full representation and -- to their  
14 client, but up until that time there's just not much that  
15 they can do except hold your hand, and you're a big enough  
16 man that you don't need that.

17 Is there any other thing about Mr. Solomon other than  
18 you just personally maybe dislike him?

19 THE DEFENDANT: It's just something  
20 personal. If I don't like the person, I'm not going to  
21 work with them.

22 THE COURT: And can you articulate that?  
23 Can you explain that to me?

24 THE DEFENDANT: No, sir, I can't explain  
25 it. It's just something about me that -- there was just

1 something about the man that I didn't like the day he came  
2 in, and I've talked with other counselors that were  
3 friends of mine and they told me that I needed somebody  
4 that would be my attorney and also be a friend to me  
5 because this is going to be a tough case.

6 THE COURT: Well, you know, you have the  
7 right to retain -- you or your friends have the right to  
8 retain anybody that you want to, but I, quite frankly,  
9 respect the decision of Judge Moye in appointing Mr.  
10 Solomon and unless I have some articulable reason, I'm not  
11 going to release him from the case. And I feel certain  
12 that being the advocate that he is, that once he gets  
13 into the case that you'll feel comfortable. And it  
14 certainly would be up to your benefit to cooperate with  
15 him. Is there anything else you want to say on that?

16 THE DEFENDANT: No, sir.

17 THE COURT: Okay. Mr. Solomon, do you want  
18 to add anything to the record on this or --

19 MR. SOLOMON: Judge, during our  
20 conversation and more particularly in regard to some  
21 letters that I have received from Billy, I went into the  
22 areas with Billy as to what he would do if I continued to  
23 represent him and he's indicated to me that he is not in  
24 any way going to assist me in the preparation of any  
25 defense, that he is not going to aid and assist in any

1 manner, does not want me representing him.

2 We have a difference of opinions in regard to the  
3 preparation for the defense. We have different opinions  
4 as to what the plea ought to be. I hate to get involved  
5 in this type of litigation where if we get halfway through  
6 it and it comes up that because of the attitude or the  
7 position that the client takes that it may cause some type  
8 of a reversible error to occur, especially since he raised  
9 it at the very beginning and not in the process, you know,  
10 I don't know if I'm the right man to proceed with Mr.  
11 Wardlow's defense given the position that he's taken.

12 THE COURT: Well, I'm going to just presume  
13 at this point in time that you are an advocate and you'll  
14 do everything that you can for and on behalf of your  
15 client that's within the law. And I'm going to assume  
16 that Mr. Wardlow understands the seriousness of the  
17 situation that he's in and that the two of you will be  
18 able to get together so that we can go forward in this.

19 And I'm sure it hasn't been fun for you sitting up  
20 there in jail for a year waiting for your trial. And I  
21 would assume that you would probably want your case to get  
22 started and proceed on as soon as possible and, you know,  
23 have this thing behind you, one way or the other. And any  
24 changing of counsel at this point in time would, of  
25 course, necessitate delaying. And I don't know how long a

CHRISTINA WALLACE  
Certified Shorthand Reporter  
(903) 639-2176

1 period of time it would take to get another attorney  
2 appointed and to get him prepared to proceed, but I don't  
3 think that that would be to anybody's particular benefit.

4 So there being no motion that I see in the file  
5 pertaining to this and having had the chance to have the  
6 defendant express himself, I believe that I would feel  
7 comfortable in proceeding on, but if at any time you feel  
8 uncomfortable to the point where you feel like you need to  
9 file a motion in this respect or the defendant presents  
10 anything additional to the Court, why of course I'll  
11 consider it. It's the responsibility of the judge to  
12 appoint an attorney who is qualified to try the case and  
13 unless there's some legal reason, the Court doesn't have  
14 the right to release an attorney once he's appointed.

15 He's got a legal and moral responsibility to do  
16 everything he can for you, and I just feel that probably,  
17 when we get right down to it, that you will understand  
18 that and you will cooperate with Mr. Solomon. People have  
19 differences of opinion. He's looking at things perhaps  
20 from a legal standpoint as to what's best for you. You  
21 may be looking at it from a different standpoint, but it's  
22 like going to the doctor. You know, you may think one  
23 thing is wrong with you and he may think it's something  
24 else. And usually the doctor doesn't say, well, which  
25 kind of pill would you prefer to take, you know, would you

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Certified Shorthand Reporter  
(903) 639-2176

1 like to take this pill or this pill. You know, you'd say,  
2 well, I think I would like to have a doctor that would  
3 tell me what pill to take.

4 And sometimes in legal questions that come up it's  
5 kind of like diagnosing a medical problem. The lawyer is  
6 required to give you what your options are and to tell you  
7 what your options are and then he also tells you what he  
8 thinks the possible consequences are and recommends a  
9 course of action for you, but it still comes down to you  
10 deciding on certain matters. So it's up to you to decide  
11 what your plea is and it's up to you to decide whether or  
12 not to testify or not to testify.

13 There are certain things that are strictly things for  
14 you to determine yourself after you've received advice  
15 from your attorney. And I would certainly encourage you  
16 to listen very carefully to the legal advice that you get  
17 from this point forward and to make -- you know, try to  
18 make as intelligent a decision as you can on it.

19 All right. I'll proceed on to the next matter. And  
20 let me ask the attorneys what y'all anticipate might be a  
21 good trial time.

22 MR. TOWNSEND: Your Honor, I'm here. You  
23 know, the sooner the --

24 THE COURT: So I assume anything I set is  
25 okay with you.

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1 MR. TOWNSEND: The sooner the better as far  
2 as the state is concerned.

3 MR. SOLOMON: Judge, let me -- of course,  
4 I'm a sole practitioner in Marshall, Texas, which is, oh,  
5 about 60 miles from here. And when to set this or when we  
6 can get started, if you can give me some kind of an idea  
7 of what your trial schedule is going to be, I mean, are we  
8 going to work this thing for five days a week from  
9 daylight to dark or are we going to be able to take some  
10 time in the middle for me to take care of other clients  
11 that are screaming and hollering or --

12 THE COURT: Well, of course, I'll try to be  
13 cognizant of everybody's time, but I sort of have a  
14 reputation of getting to the bone and going with it. I  
15 would certainly think that we might be able to work four  
16 and a half days a week from say 9:00 o'clock until 5:00.  
17 It may be that we would be so successful in, you know,  
18 getting through this jury selection in a timely fashion  
19 that it could be more generous in the time frame, but I  
20 kind of like to start off with a strict schedule and then  
21 ease up if everything -- if everybody seems to be moving  
22 along without any undue delay.

23 MR. SOLOMON: From my past experience, I  
24 think that we could probably anticipate four to six weeks  
25 on a jury and maybe -- maybe, Richard, what, a week in

1 trial on the merits?

2 MR. TOWNSEND: A week to a week and a half.

3 MR. SOLOMON: Okay.

4 THE COURT: Well, that's what I was hoping  
5 that maybe we could pick a jury in four weeks, and usually  
6 these cases last a week or ten days.

7 MR. SOLOMON: Uh-huh.

8 THE COURT: Do we have any motions that  
9 will require testimony?

10 MR. SOLOMON: Judge, the motions on file,  
11 discovery, I believe, there is nothing that Mr. Townsend  
12 has held back in any regard. He has furnished me kind of  
13 an open file policy. I believe that's correct. And, of  
14 course, I don't know what he's got in the file, but it  
15 appears that he's given me everything as it has come in.

16 MR. TOWNSEND: There are some photographs  
17 that I don't think you've seen.

18 MR. SOLOMON: Okay.

19 MR. TOWNSEND: You know, a few minor items  
20 like that, but other than that.

21 MR. SOLOMON: The only thing that -- there  
22 has been a matter come up in the form of a letter that I  
23 have not reviewed and we may have a suppression hearing on  
24 that, but that might be something that we can take up at  
25 any time prior to the beginning of the trial. There is a

1 need for -- I was hoping we could work out something by  
2 agreement on venue, but a possibility we'll file a motion  
3 for a change of venue and a motion for the appointment of  
4 investigators or an investigator and a psychiatric  
5 evaluation by a doctor of our choice. I think probably  
6 that along with an open discovery order that he'll  
7 supplement anything or identify anything that he's held  
8 back and not given me and then we can identify what he has  
9 by an itemized list to be filed with the Court to identify  
10 those.

11 MR. TOWNSEND: We could get those lists  
12 ready for you. No problem.

13 MR. SOLOMON: And then I'm going to need  
14 some time to put together the necessary evidence in regard  
15 to a change of venue and have a hearing on that.

16 THE COURT: All right. What about the  
17 state? Do you see the need for any --

18 MR. TOWNSEND: The only thing that we have  
19 set as far as motions at this time are in relation to the  
20 letter Mr. Solomon discussed. We have a motion for a  
21 handwriting exemplar to be taken and we have a motion in  
22 limine filed as to discussion of parole and a motion  
23 for -- to be given certified copies of some of the  
24 defendant's juvenile records, but nothing that would  
25 require an evidentiary hearing.

1 THE COURT: Okay.

2 MR. SOLOMON: Judge, my -- I would like to  
3 be given enough time prior to the beginning of the voir  
4 dire so that I can either speed up some of the litigation  
5 that I've got currently pending with clients -- and it's  
6 mostly going to be in the area of domestic relations  
7 requiring hearings -- that I can maybe accelerate some of  
8 those and put off some so that I won't be caught with, oh,  
9 grievances being filed for nonprosecution of the cases  
10 that I'm representing.

11 THE COURT: I understand. That's perhaps a  
12 problem with any lawyer that takes on a case of this  
13 magnitude. How many weeks does it take to get a jury  
14 panel notified, say if I wanted a jury for the week of  
15 June 20th?

16 THE DISTRICT CLERK: We usually send out  
17 our notices about two weeks ahead. Of course, we could  
18 pull the list any day, but if we have two weeks notice, I  
19 think that would do.

20 THE COURT: What does June the 20th look  
21 like for everybody?

22 MR. TOWNSEND: For --

23 THE COURT: Commencing of voir dire and  
24 then I can hold the week of June the 6th open for any  
25 motions and evidentiary hearings. I think we can go off

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1 the record while we discuss this.

2 (Off the record.)

3 THE COURT: All right. The Court will come  
4 to order, and during the recess we had further  
5 conversations with the lawyers and the Court is going to  
6 set pretrial or set a hearing on change of venue for July  
7 the 23rd at 10:00 a.m. in consideration of your 60 mile  
8 drive.

9 MR. SOLOMON: Thank you, Judge.

10 THE COURT: And the Court will also hear  
11 any other matters that require testimony on the 23rd and  
12 carry that over to July the 24th, if necessary. If the  
13 Court denies the change of venue, then I will call for a  
14 jury panel on July the 11th. I said July the -- that's  
15 June, June the 23rd is what I meant to say, and will call  
16 for a jury panel on July the 11th, and if the change of  
17 venue should be granted, I will call for a jury panel in  
18 an adjoining county for July the 18th, providing that they  
19 are able to accommodate us.

20 The Court will go through and look at the motions on  
21 file and rule on those motions that are to be ruled on at  
22 this time. The first thing that comes to my attention is  
23 the defendant's letter to Judge Moye, and of course  
24 it's -- you know, you have the right to write a letter to  
25 anybody that you want to, but I would caution you that you

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(903) 639-2176

1 would be well served by not discussing any of the facts of  
2 the case in any letter that you write because it may  
3 constitute admissible testimony against you and it may be  
4 matters that can be used against you. Just matters of  
5 procedure, it's always better that you go through your  
6 attorney.

7 I have a motion in limine. I'll call this motion in  
8 limine number one in the event there's others filed.  
9 Paragraph one is granted. Paragraph two is granted.  
10 Paragraph three is granted. Paragraph four is granted at  
11 this time. Paragraph five is granted. Six is granted.  
12 Seven is granted and these -- as a motion in limine. Of  
13 course, if a hearing is conducted and it is shown that he  
14 has been previously convicted, then that would be  
15 admissible.

16 Paragraph eight is -- of course, it's part of the  
17 jury voir dire that the jury might know that both sides  
18 have the right to call reputation witnesses. The state  
19 has the right to call witnesses that might testify that  
20 the defendant has a bad reputation. The defendant has the  
21 right to call witnesses that might say he has a good  
22 reputation.

23 MR. SOLOMON: I have no objection to that,  
24 Your Honor. What the limine goes to is the prosecutor  
25 informing the jury that we will call witnesses to testify

1 that he has a bad reputation.

2 THE COURT: Well, how about changing "may"  
3 to "will"? Do you have any objection to that?

4 MR. SOLOMON: Yes. And I have no objection  
5 to it.

6 THE COURT: All right. I changed "may" to  
7 "will" and will grant it on that basis. Motion for mental  
8 examination -- now, is this a motion that's separate and  
9 apart from your motion asking for medical assistance in --

10 MR. SOLOMON: I think this is the motion,  
11 Judge. I think it would go to -- this examination would  
12 lead to any other, if necessary. I have a motion for the  
13 appointment of mental -- just a second --

14 THE COURT: As I read this motion, it would  
15 be up to the Court to appoint an expert to examine the  
16 defendant and make that examination available to the Court  
17 on the issue of competency. I thought I saw another  
18 motion that was different. Let me pass by this motion for  
19 a moment --

20 MR. SOLOMON: Okay.

21 THE COURT: -- and we'll come back to it.  
22 Defendant's pretrial motion for disclosure of exculpatory  
23 evidence. Has the state reviewed this motion?

24 MR. TOWNSEND: Yes, Your Honor.

25 MR. SOLOMON: Do you have any objection to

1 any part of it?

2 MR. TOWNSEND: Let me answer real quickly.  
3 No, I didn't have any objections, Your Honor.

4 THE COURT: All right. That's granted by  
5 agreement.

6 The Court would rule that the state will reveal any  
7 information that is relevant or material and favorable to  
8 the defendant on the issue of guilt or punishment and that  
9 this is a continuing motion and continues throughout the  
10 proceeding, which means the state has a continuing  
11 obligation to comply with this newly found evidence, if  
12 any.

13 Okay. Motion in limine -- we'll call this number  
14 two -- well, I wouldn't think I'd have to rule on this,  
15 but I'll grant that. I'm sure that counsel isn't going to  
16 engage in name calling.

17 Defendant's motion for a list of state's witnesses.

18 MR. TOWNSEND: I have no disagreement with  
19 it.

20 THE COURT: You have no disagreement?  
21 Okay. That can be so granted by agreement. And the list  
22 of witnesses will, of course, have to be filed prior to  
23 jury voir dire so that the defendant might have the  
24 benefit of that during jury voir dire.

25 Defendant's motion for court reporter to transcribe



1 proceedings is granted.

2 Motion for a hearing to determine qualification and  
3 reputation of the character witnesses to testify pursuant  
4 to Rule 405, that is granted.

5 Motion for the appointment of an investigator and  
6 expert witness. Okay. The Court will grant the motion  
7 for you to hire an investigator. The Court will not  
8 appoint an investigator by name, but will give you the  
9 authority to select your own investigator and will limit  
10 expenses to 1,500 dollars at this time without prejudice  
11 to you asking for additional sums, if you show that it's  
12 necessary.

13 Okay. Motion for discovery production and inspection  
14 of evidence number one, I don't know if counsel for the  
15 state has had time to go over all of this or not.

16 MR. TOWNSEND: Your Honor, I have not  
17 thoroughly read this, but I certainly don't anticipate  
18 failing to disclose anything.

19 MR. SOLOMON: Judge, if --

20 THE COURT: Well, why don't I just rule  
21 that this is granted by agreement, but the state has the  
22 right to bring any portion of it to my attention that you  
23 disagree with in a reasonable time and then the Court  
24 would make a specific ruling on that. Does that satisfy  
25 you?

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1 MR. SOLOMON: Yes, Judge. The only thing I  
2 ask is if there's one of those requests that there is none  
3 available that we have a response to it that there is  
4 none.

5 THE COURT: All right.

6 MR. TOWNSEND: Okay. That's fine.

7 MR. SOLOMON: Maybe a written response to  
8 each one of them and then we can --

9 MR. TOWNSEND: Let me write a note on that.

10 THE COURT: Okay. What I've written on  
11 here for clarification is that this is granted by  
12 agreement. If the state seeks to object to any particular  
13 item, they must bring it to the attention of the Court  
14 within two weeks of this date. If state's response to  
15 requested -- to request is that no such evidence exists or  
16 that no such evidence is in their possession, then that  
17 notation should be made.

18 All right. I think that concludes all matters except  
19 the defendant's motion for mental examination. If we  
20 could go off the record for just a minute.

21 (Off the record.)

22 THE COURT: All right. The defendant has  
23 amended his -- defendant's motion for mental examination  
24 to show that it is a motion for mental experts and that he  
25 be allowed to retain a mental expert to act as part of his

1 team. Any objection to the amendment from the state?

2 MR. TOWNSEND: None, Your Honor.

3 THE COURT: Okay. All right. The Court  
4 grants the defendant's request that he be allowed to  
5 retain an expert witness to act as a member of the defense  
6 team and to make a report to the defendant. The Court  
7 will limit expenses to 2,500 dollars at this time, and I  
8 believe from talking with both sides that you feel like  
9 you can work within that range, at least initially?

10 MR. SOLOMON: Uh-huh.

11 THE COURT: Does the state have any Brady  
12 material that it wishes to make a record at this time that  
13 you have in this case?

14 MR. TOWNSEND: None, Your Honor.

15 THE COURT: The record will so reflect.  
16 Any other motions that either side would want to bring to  
17 the attention of the Court? I believe you have a  
18 handwriting exemplar or --

19 MR. TOWNSEND: Yes, Your Honor, I've got a  
20 motion.

21 THE COURT: Has the defendant been served  
22 with a copy of the motion for a handwriting exemplar?

23 MR. SOLOMON: I have a copy of it, yes.

24 THE COURT: Is there any objection to the  
25 motion or any argument on the motion?

1 MR. SOLOMON: I have no objection, Judge.

2 THE COURT: All right. The motion is  
3 granted and the defendant will be ordered to comply. And  
4 what this is, Mr. Wardlow, is a request that you just  
5 write in your usual handwriting this paragraph that won't  
6 make an awful lot of sense to you, but just write that in  
7 your own handwriting and follow this order. Your lawyer  
8 will explain that to you further.

9 All right. Any other matters that either side would  
10 like to bring up?

11 MR. TOWNSEND: Your Honor, at this time  
12 I've got this motion for juvenile records. The district  
13 clerk's office has, I believe, a juvenile record on Billy  
14 Wardlow that would show a juvenile conviction in Morris  
15 County, cause number 247. And I would just like a  
16 certified copy of that pursuant to 3707, Code of Criminal  
17 Procedure, and 5114 of the Family Code.

18 THE COURT: Have you been served with a  
19 copy of that?

20 MR. SOLOMON: I have a copy of that, Your  
21 Honor, yes.

22 THE COURT: All right. Do you have any  
23 objection to it so long as I require him to furnish you  
24 with a copy of it?

25 MR. SOLOMON: I have no objection.

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1 THE COURT: That is agreeable? Granted.  
2 All right. Anything else then? All right. And just for  
3 planning purposes, the matters that we will go into  
4 besides the change of venue on June the 23rd will be  
5 possibility of the admission -- admissibility of certain  
6 statements made by the defendant after he was under arrest  
7 and in custody. Is that basically --

8 MR. SOLOMON: That's correct, Your Honor.

9 THE COURT: -- the only other motion that  
10 you're aware of at this time? Okay. Do you mind if I ask  
11 the defendant a couple of general questions?

12 MR. SOLOMON: I have no objection, Your  
13 Honor.

14 THE COURT: It's all right with you? How  
15 old are you?

16 THE DEFENDANT: Nineteen.

17 THE COURT: Nineteen years old?

18 THE DEFENDANT: Uh-huh.

19 THE COURT: Okay. And how far did you go  
20 in school, Mr. Wardlow?

21 THE DEFENDANT: To the 12th.

22 THE COURT: The 12th grade? Did you  
23 graduate or --

24 THE DEFENDANT: No, sir, I stopped halfway  
25 through the 12th grade.

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1 THE COURT: Halfway through the 12th? Do  
2 you live in Morris County?

3 THE DEFENDANT: I did. I lived in Cason.

4 THE COURT: And how long have you lived in  
5 the county?

6 THE DEFENDANT: Eighteen, seventeen years.  
7 Probably 17 years.

8 THE COURT: Most all of your life?

9 THE DEFENDANT: Most of my life, yes, sir.

10 THE COURT: And is your father and mother  
11 in this county?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And they are married and not  
14 separated or divorced?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And do you have brothers and  
17 sisters?

18 THE DEFENDANT: One brother.

19 THE COURT: And have you received visits  
20 from your family?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. Is there any -- anything  
23 further you'd like to say at this time?

24 THE DEFENDANT: No, sir.

25 THE COURT: All right. We'll close the

1 hearing and the Court will prepare the docket sheet, and  
2 all the Court's rulings are on record. All right. Thank  
3 you.

4 (End of hearing.)  
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Certified Shorthand Reporter  
(903) 639-2176

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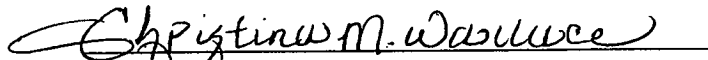
STATE OF TEXAS )

COUNTY OF MORRIS )

I, Christina M. Wallace, a Certified Shorthand Reporter and Notary Public in and for the State of Texas, do hereby certify that the foregoing 28 pages constitute a full, true and correct transcription of the proceedings had in the hearing on pretrial motions in the above-captioned cause; thereafter, reduced to typewritten form by me and under my supervision.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, admitted into evidence.

WITNESS MY HAND on this the 27th day of March, 1995.

  
Christina M. Wallace, CSR  
CSR No. 2972  
Certification Expires: 12-31-96

Business Address:  
Route 3, Box 322  
Hughes Springs, Texas 75656

Telephone:  
(903) 639-2176

\$ 123.25 preparation cost

CHRISTINA WALLACE  
Certified Shorthand Reporter  
(903) 639-2176